

MEMORANDUM

May 4, 2001

The Vice President
Governor Whitman



Energy Report Considerations

I wanted to raise a handful of issues for you to consider as our staffers make the final changes to the report. My staff is sending over our detailed comments on the report, and perhaps many of these issues will be resolved by the staff. I want to make sure that the report is as strong as it can be, and that we can defend it against unnecessary political vulnerabilities. I also think that the tone can be improved—humanized & personalized—by adding back some deleted material on health benefits.

There is some low-hanging fruit that can pay big dividends, and we can avoid some mistakes that will undercut our basic message of a sound national energy strategy that is consistent with environmental protection.

Thank you for your support throughout this process.

1. **General Tone**—The general tone of the report could be improved with some simple fixes. For example, EPA furnished statistics on the health benefits of cleaner air which were deleted. The statistics highlight the human face of why we protect the environment, and balance the discussion of the costs of environmental regulation. Polling shows people are willing to pay a reasonable cost for clean air. We know others will raise human health issues in attacking the report, we should not let them completely define the issue. Further, environmental protection is cited as a barrier to increasing domestic energy production. That is just the reverse side of the false choice the environmental community always poses—that increased energy production will destroy the environment. We should not fall into that trap—Republicans should stand for the proposition that we can have both.
2. **National Energy Intensity Goal**—The report is short on pro-environment specifics. I suggested adding a specific goal for increasing the energy intensity of the economy. This builds on a feature of the National Energy Policy Act of 1992. The EIA projections show a 26% improvement from 2000 to 2020 under business as usual. I suggest a goal of at least 30% over the same time frame.
3. **New Source Review** —This is the toughest needle to thread. As we discussed, the real issue for industry is the enforcement cases. We will pay a terrible political price if we undercut or walk away from the enforcement cases; it will be hard to refute the charge that we are deciding not to enforce the Clean Air Act.

We can and will reform NSR for everyone, including refineries. Some of the reform will come immediately as a result of the Executive Order to streamline energy permitting. Some reforms will come as part of the three pollutant bill. Some reforms will come later, after we get the results of the independent NSR study (reportedly sponsored by Senators Inhofe & Bond) mandated in the FY 01 appropriations bill. We will be subject to unnecessary political damage if we make specific commitments on things like "routine maintenance, or if we make a commitment now to seek additional legislative reforms beyond the three pollutant bill. The environmental community, some states and the public will read that as an attack on the enforcement cases. Settlements will likely slow down or stop. It will also prove counterproductive. I think a broad attack in the report on NSR will permanently destroy our chance to achieve any needed legislative reforms we may seek in the future.

4. Hydraulic Fracturing --- There is one 1997 case, limited to Alabama, holding that hydraulic fracturing for methane recovery should be regulated under the Safe Drinking Water Act. EPA does not agree with the court's decision, but draft language in the report goes much further. It states that all hydraulic fracturing should be exempted from the Act. EPA is studying this; I strongly suggest limiting the recommendation to the problem we know about---hydraulic fracturing for coalbed methane. Otherwise, before the study is completed, we are potentially walking into a trap because we don't yet know the environmental consequences of the broader exemption, or why it is needed.